

# **Exhibit 1**

1 (Pages 1 to 4)

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona  
corporation, )  
)  
Plaintiff/Counterdefendant, )  
)  
vs. ) NO. 2:06-CV-02141-DGC  
)  
MIDWEST INDUSTRIAL SUPPLY,  
INC., an Ohio corporation  
authorized to do business  
in Arizona, )  
)  
Defendant/Counterclaimant. )

Phoenix, Arizona  
April 9, 2008  
9:00 a.m.

C O N F I D E N T I A L  
DEPOSITION OF CHAD FALKENBERG  
SOILWORKS, LLC 30(b)(6)  
(VOLUME I, Pages 1 - 229)

LEA, SHERMAN & HABESKI  
Registered Professional Reporters  
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Reported by: Linda Blackmon, RPR/RMR  
Certified Reporter  
Certificate No. 50320

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1 DEPOSITION OF CHAD FALKENBERG,  
2 taken at 9:09 a.m., on April 9, 2008, at the law  
3 offices of Jones, Skelton & Hochuli, 2901 North Central  
4 Avenue, Suite 800, Phoenix, Arizona, before LINDA  
5 BLACKMON, RPR/RMR, a Certified Reporter in the State of  
6 Arizona.

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15 Also Present:  
16 Robert Vitale  
17  
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<p style="text-align: right;">161</p> <p>1 foundation.</p> <p>2 A. I don't know.</p> <p>3 MR. SKERIOTIS: I want you to take a look</p> <p>4 at this. I am going to call Mr. Vitale back in and I</p> <p>5 am going to mark it as an exhibit but it's marked</p> <p>6 "attorneys' eyes only" and I am asking you to waive</p> <p>7 that.</p> <p>8 MR. DOSEK: This is from Polar?</p> <p>9 MR. SKERIOTIS: No, this is from the</p> <p>10 State of Alaska. I am sorry, Polar Supply provided us</p> <p>11 this document, yes.</p> <p>12 MR. DOSEK: That's fine.</p> <p>13 MR. SKERIOTIS: Okay.</p> <p>14</p> <p>15 (END OF ATTORNEYS' EYES ONLY SECTION)</p> <p>16</p> <p>17 (Mr. Vitale returned to deposition.)</p> <p>18 Q. BY MR. SKERIOTIS: Mr. Falkenberg, I am going</p> <p>19 to hand you once I find it Exhibit 8 again and I forgot</p> <p>20 to go over one section with you and I apologize having</p> <p>21 to make you go back over this. As you recall this is</p> <p>22 Soilworks' responses to Midwest's first request for</p> <p>23 production of documents and things; do you see that?</p> <p>24 A. I see that.</p> <p>25 Q. Yesterday Mrs. Falkenberg indicated that you</p>	<p style="text-align: right;">163</p> <p>1 Q. Right. To my address at the law firm,</p> <p>2 correct?</p> <p>3 A. Oh, okay. Yes.</p> <p>4 Q. In it he attaches two documents, correct?</p> <p>5 A. That's what it says.</p> <p>6 Q. In fact both documents are behind his letter</p> <p>7 if you turn the page?</p> <p>8 A. Yes.</p> <p>9 Q. And the one is dated September 18, 2007; do</p> <p>10 you see that?</p> <p>11 A. I see that.</p> <p>12 Q. Do you know what that is?</p> <p>13 A. What the date is?</p> <p>14 Q. What the document is, sir.</p> <p>15 A. This is a list of our confidential ingredients</p> <p>16 for Durasoil.</p> <p>17 Q. There are three ingredients listed, correct?</p> <p>18 A. Yes.</p> <p>19 Q. White mineral oil, hydrotreated light</p> <p>20 paraffinic petroleum distillates and hydrotreated</p> <p>21 middle petroleum distillates, correct?</p> <p>22 A. That's what it says.</p> <p>23 Q. Did you prepare this document?</p> <p>24 A. I did.</p> <p>25 Q. And there are three CAS numbers, correct?</p>
<p style="text-align: right;">162</p> <p>1 prepared these last two pages.</p> <p>2 A. I did.</p> <p>3 Q. Is that correct?</p> <p>4 A. I did.</p> <p>5 Q. Before we go over that can you tell me what</p> <p>6 your understanding of Durasoil -- does it contain a</p> <p>7 binder?</p> <p>8 A. I would say no. Based on my definition of</p> <p>9 "binder" I would say absolutely no.</p> <p>10 Q. Does it contain a synthetic isoalkane?</p> <p>11 A. I am going to refer to what is written here</p> <p>12 and that is that "Durasoil does not contain a synthetic</p> <p>13 isoalkane because it is not manufactured molecule by</p> <p>14 molecule like a Group 4 PAO base oil."</p> <p>15 Q. Let me have that a minute so I can see if it's</p> <p>16 the same as mine real fast. I think it is because I</p> <p>17 put highlights on it. I guess before I do this, too, I</p> <p>18 have to get the ingredient list out.</p> <p>19 I am going to hand you now what has been</p> <p>20 marked as Exhibit 3, have you seen that document</p> <p>21 before?</p> <p>22 A. Yes, this looks familiar.</p> <p>23 Q. And it's an October 3rd, 2007 letter from</p> <p>24 Mr. Passarelli to myself, correct?</p> <p>25 A. And Brouse McDowell.</p>	<p style="text-align: right;">164</p> <p>1 A. There are.</p> <p>2 Q. What is a CAS number?</p> <p>3 A. I can't be for sure but I know that it relates</p> <p>4 to chemicals that are well used so that people have a</p> <p>5 reference, a way to reference a number rather than a</p> <p>6 term that can be confusing, which is a big problem with</p> <p>7 this case, and there can be attached information with</p> <p>8 that so people have a better understanding of those</p> <p>9 chemicals' properties. That's my understanding of what</p> <p>10 a CAS number is and what it's for.</p> <p>11 Q. What do these CAS numbers here represent?</p> <p>12 A. They are attached to the chemical description</p> <p>13 that is sitting in front of it.</p> <p>14 Q. How would I order any of these products from</p> <p>15 one of your chemical manufacturers?</p> <p>16 MR. DOSEK: Object to the form.</p> <p>17 A. I don't know how you would order it.</p> <p>18 Q. BY MR. SKERIOTIS: Would I order it by CAS</p> <p>19 number is my point?</p> <p>20 A. I don't think you can do that.</p> <p>21 Q. How do you buy these ingredients?</p> <p>22 A. We have -- again, we talked about this earlier</p> <p>23 and I explained to you that we have parameters of what</p> <p>24 the product needs to meet in order to fulfill our</p> <p>25 needs.</p>

<p style="text-align: right;">165</p> <p>1 Q. Who does the meeting of that criteria, the</p> <p>2 chemical manufacturer?</p> <p>3 A. I would think so.</p> <p>4 Q. I mean you don't do it, correct?</p> <p>5 A. Well, that depends.</p> <p>6 Q. On what?</p> <p>7 A. For example we bring -- I talked about</p> <p>8 bringing in different things from our suppliers, we</p> <p>9 will take those and combine them to achieve certain</p> <p>10 results for solving our customers' problems, so I can't</p> <p>11 say that our suppliers fulfill our needs in that way</p> <p>12 completely.</p> <p>13 Q. Are you saying there are different versions of</p> <p>14 Durasoil?</p> <p>15 A. I am saying Durasoil has a margin of</p> <p>16 characteristics.</p> <p>17 Q. Are there different versions of Durasoil? Is</p> <p>18 one gallon of Durasoil potentially different than</p> <p>19 another gallon of Durasoil?</p> <p>20 MR. DOSEK: I think we are getting into</p> <p>21 information that is probably attorneys' eyes only.</p> <p>22 MR. SKERIOTIS: Okay.</p> <p>23 MR. DOSEK: Do you agree?</p> <p>24 MR. SKERIOTIS: I agree.</p> <p>25 (Mr. Vitale left the deposition.)</p>	<p style="text-align: right;">167</p> <p>1 MR. DOSEK: Object to the form.</p> <p>2 A. I don't understand.</p> <p>3 Q. BY MR. SKERIOTIS: Okay. First of all why</p> <p>4 don't you answer my question about whether or not one</p> <p>5 gallon of Durasoil can be different than another gallon</p> <p>6 of Durasoil, in other words they are not identical? Is</p> <p>7 that a true statement or not?</p> <p>8 A. Potentially. For example they can have</p> <p>9 different viscosities and if you are classifying that</p> <p>10 as being different --</p> <p>11 Q. I am.</p> <p>12 A. -- then the answer would be yes.</p> <p>13 Q. But if I am understanding this chemical</p> <p>14 ingredient list correctly, it could be that you have</p> <p>15 100 percent white mineral oil in one gallon of Durasoil</p> <p>16 with CAS number 8042-47-5, correct, and that could be</p> <p>17 one version of Durasoil?</p> <p>18 A. It's possible.</p> <p>19 Q. And then another one right next to it could be</p> <p>20 100 percent hydrotreated light paraffinic petroleum</p> <p>21 distillate 64742-55-8, correct?</p> <p>22 A. That would seem correct.</p> <p>23 Q. And those two would not be identical, correct?</p> <p>24 A. If that's your definition, then yes.</p> <p>25 Q. They are different chemicals, are they not?</p>
<p style="text-align: right;">166</p> <p>1 (BEGINNING OF ATTORNEYS' EYES ONLY SECTION)</p> <p>2 A. Let's talk specifically about viscosities. We</p> <p>3 can take something with a low viscosity and a high</p> <p>4 viscosity that both fall under the parameters of</p> <p>5 Durasoil and we can combine those together to create a</p> <p>6 unique viscosity that is normally not made otherwise.</p> <p>7 Q. BY MR. SKERIOTIS: So as you sit here today,</p> <p>8 though, those criteria you are talking about have not</p> <p>9 been given to us?</p> <p>10 A. I don't understand.</p> <p>11 Q. The criteria you are talking about, this range</p> <p>12 of Durasoil, am I explaining that right? You said you</p> <p>13 had a range of this product, correct?</p> <p>14 A. You mean what defines Durasoil?</p> <p>15 Q. Correct.</p> <p>16 A. Its chemical --</p> <p>17 Q. Whatever it is you talked about just now.</p> <p>18 A. I can't say that we haven't.</p> <p>19 Q. This is the only thing that I have in my</p> <p>20 possession related to the Durasoil product as far as</p> <p>21 ingredients go and parameters.</p> <p>22 A. Okay.</p> <p>23 Q. We talked about earlier there were other</p> <p>24 things that existed with respect to the Durasoil</p> <p>25</p>	<p style="text-align: right;">168</p> <p>1 A. I think you are generalizing the nature of</p> <p>2 these chemicals and that's where the problem lies.</p> <p>3 These are all under the same family.</p> <p>4 Q. But there is a reason why there is three</p> <p>5 different chemicals here, is there not?</p> <p>6 A. It certainly provides us with options.</p> <p>7 Q. Tell me why, then, why there are three</p> <p>8 different chemicals for Durasoil.</p> <p>9 A. Hypothetically, what if the price of white</p> <p>10 mineral oil is lower than the people that we are</p> <p>11 dealing with for hydrotreated light paraffinic</p> <p>12 petroleum distillates, that would be motivation for us</p> <p>13 to move.</p> <p>14 Q. So then is it fair to say that these three</p> <p>15 products are interchangeable with one another?</p> <p>16 MR. DOSEK: Object to the form.</p> <p>17 A. Can you restate it.</p> <p>18 Q. BY MR. SKERIOTIS: Are these three products</p> <p>19 interchangeable with one another?</p> <p>20 MR. DOSEK: Same objection.</p> <p>21 A. I don't know.</p> <p>22 Q. BY MR. SKERIOTIS: Are they the same product?</p> <p>23 A. Well, you can see they all have three</p> <p>24 different CAS numbers.</p> <p>25 Q. Correct. But from a chemical standpoint, a</p>

<p style="text-align: right;">169</p> <p>1 performance standpoint, are they all the same?</p> <p>2 A. I think that's too broad to make that claim.</p> <p>3 Q. Tell me how they are different.</p> <p>4 A. I am not a chemist. It is my understanding</p> <p>5 that these are all in the same family, and based on the</p> <p>6 work that we have done they fit the needs to be</p> <p>7 described under the Durasoil framework.</p> <p>8 Q. Why do you have three different ingredients?</p> <p>9 A. Because we can.</p> <p>10 Q. Are they just different in price to provide</p> <p>11 you options?</p> <p>12 A. That would be certainly an important reason.</p> <p>13 Q. Is there one of the three that you have</p> <p>14 predominantly used for Durasoil?</p> <p>15 A. Yes.</p> <p>16 Q. Which one?</p> <p>17 A. I can't say for sure but it is not -- it's</p> <p>18 between the last two, not the white mineral oil because</p> <p>19 the white mineral oil is generally -- has traditionally</p> <p>20 been a higher cost.</p> <p>21 Q. What percentage, if you know, between the last</p> <p>22 two have you typically bought for Durasoil?</p> <p>23 A. That's the problem, I can't quantify that at</p> <p>24 this point right now today.</p> <p>25 Q. Do you have any sense of what it would be? Is</p>	<p style="text-align: right;">171</p> <p>1 A. If you are asking if we use one more than two,</p> <p>2 the answer would be yes.</p> <p>3 Q. Is Durasoil a blend?</p> <p>4 A. It can be.</p> <p>5 Q. When can it be a blend?</p> <p>6 A. I will revert back to the example of blending</p> <p>7 off various viscosities.</p> <p>8 Q. How do you blend viscosities?</p> <p>9 A. The most crude method would be simply</p> <p>10 combining the two without agitation.</p> <p>11 Q. Combining what two?</p> <p>12 A. Two different viscosities, two different</p> <p>13 liquids of different viscosities, simply combining them</p> <p>14 together without agitation, pouring one product in</p> <p>15 after another.</p> <p>16 Q. What would this combination of two different</p> <p>17 viscosities be for Durasoil if it were to be a blend?</p> <p>18 MR. DOSEK: Object to form.</p> <p>19 A. I don't understand.</p> <p>20 Q. BY MR. SKERIOTIS: You said you would -- I</p> <p>21 think I wrote it down. You said you would combine two</p> <p>22 different viscosities, two different liquids, without</p> <p>23 agitation. Is that what you said?</p> <p>24 A. No. I said that is a way --</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">170</p> <p>1 it 90/10 percentwise or is it 50/50?</p> <p>2 A. The documents that you say you don't have that</p> <p>3 I believe we have provided you should show you what we</p> <p>4 have ordered.</p> <p>5 Q. And you will make those documents available</p> <p>6 for copying again if they weren't made available the</p> <p>7 first time?</p> <p>8 A. We will do what we need to do to make things</p> <p>9 right.</p> <p>10 Q. Have you ever combined these three ingredients</p> <p>11 together --</p> <p>12 A. Yes.</p> <p>13 Q. -- and sold that product as Durasoil?</p> <p>14 A. I can't say for sure.</p> <p>15 Q. Okay.</p> <p>16 A. I will say that generally it's not a</p> <p>17 combination of three, generally, if anything, it would</p> <p>18 be two.</p> <p>19 Q. Is Durasoil primarily just one of these</p> <p>20 ingredients?</p> <p>21 A. Wouldn't that be similar to your last</p> <p>22 question?</p> <p>23 Q. Well, yeah, I guess, but this time I added the</p> <p>24 word "primarily." Is it primarily just one of these</p> <p>25 ingredients?</p>	<p style="text-align: right;">172</p> <p>1 A. -- that it could be done.</p> <p>2 Q. So if you did it that way, what two different</p> <p>3 liquids would you be combining?</p> <p>4 A. I think it's important for you to understand</p> <p>5 that each of these chemicals that are listed on this</p> <p>6 ingredients list have a broad spectrum of properties as</p> <p>7 well. You have brought out earlier the ConocoPhillips</p> <p>8 chart with the Pure Performance.</p> <p>9 Q. Okay.</p> <p>10 A. Do you understand what that table represents?</p> <p>11 Q. Probably not.</p> <p>12 A. Okay. Because that's very important to</p> <p>13 understand the differences between those vertical</p> <p>14 columns.</p> <p>15 Q. So I think what you are saying, though, is</p> <p>16 that for example this hydrotreated light paraffinic</p> <p>17 petroleum distillate has a range of viscosities; would</p> <p>18 that be fair?</p> <p>19 A. I think that's fair.</p> <p>20 Q. And then --</p> <p>21 A. And I am talking viscosity is the most obvious</p> <p>22 thing.</p> <p>23 Q. Right. And you would ask for example</p> <p>24 ConocoPhillips to give you this hydrotreated light</p> <p>25 paraffinic petroleum distillate in a high viscosity</p>

<p style="text-align: right;">173</p> <p>1 range and then maybe combine it with something in a low</p> <p>2 viscosity range; would that be fair?</p> <p>3 A. I think that sounds reasonable.</p> <p>4 Q. And that would be a blend, then, in your mind?</p> <p>5 A. Yes.</p> <p>6 Q. And you would do that trying to achieve what,</p> <p>7 a middle ground viscosity?</p> <p>8 A. That's a great way to look at it.</p> <p>9 Q. Why wouldn't you just buy the middle ground of</p> <p>10 viscosity?</p> <p>11 A. There is no such thing.</p> <p>12 Q. It's either one or the other, high or low</p> <p>13 typically?</p> <p>14 A. Typically.</p> <p>15 Q. With respect to viscosity?</p> <p>16 A. Typically.</p> <p>17 Q. And who would do that blending?</p> <p>18 A. We do it in-house.</p> <p>19 Q. And so then if I understand you correctly,</p> <p>20 Durasoil can be a binder and it can also not be a</p> <p>21 binder? I'm sorry, strike that.</p> <p>22 Durasoil can be a blend or it can at</p> <p>23 times not be a blend, correct?</p> <p>24 A. That would be correct.</p> <p>25 Q. Okay. Let's go back, then, to Exhibit 8.</p>	<p style="text-align: right;">175</p> <p>1 Q. So then how come you can't tell me for certain</p> <p>2 whether or not your product has a carboxylic acid or</p> <p>3 not because you could have done the same testing,</p> <p>4 correct?</p> <p>5 A. Well, if Midwest provided us with a CAS number</p> <p>6 for carboxylic acid, that would probably have helped a</p> <p>7 lot to determine that, but instead they use a very</p> <p>8 broad term that is ambiguous in my opinion that does</p> <p>9 not very accurately describe the ingredients that go</p> <p>10 into making that product and I think that is</p> <p>11 intentional to confuse others about what is in there.</p> <p>12 Q. But as you sit here you have said you are not</p> <p>13 a chemist, correct?</p> <p>14 A. I am not a chemist.</p> <p>15 Q. So you don't know what carboxylic acid is?</p> <p>16 A. I have an opinion.</p> <p>17 Q. Do you know what carboxylic acid is?</p> <p>18 A. I do not emphatically know what carboxylic</p> <p>19 acid is.</p> <p>20 Q. Does Durasoil contain an ester?</p> <p>21 A. I have been informed that it does and so it is</p> <p>22 now my belief that it does.</p> <p>23 Q. So if it contains an ester, then it would</p> <p>24 meet A, correct, if a binder is an ester?</p> <p>25 A. If ester is a binder, then yes.</p>
<p style="text-align: right;">174</p> <p>1 Exhibit 8 we have gone back to the last two pages on,</p> <p>2 and you indicated that you prepared this document and</p> <p>3 we are going through it to say Durasoil does not have a</p> <p>4 binder, correct?</p> <p>5 A. That's my belief.</p> <p>6 Q. You indicate Durasoil does not have any</p> <p>7 carboxylic acid; is that a true statement?</p> <p>8 A. I would like to say that it is my belief that</p> <p>9 we do not have carboxylic acid. I am certainly not the</p> <p>10 best person to ask what carboxylic acid is or where it</p> <p>11 can be found or what its synonyms or alternate</p> <p>12 descriptions are and I think it's important to note</p> <p>13 that I did the best I could with putting these</p> <p>14 together.</p> <p>15 MR. DOSEK: John, are we looking at 270</p> <p>16 or 266, which one?</p> <p>17 MR. SKERIOTIS: 270.</p> <p>18 MR. DOSEK: Okay.</p> <p>19 Q. BY MR. SKERIOTIS: You are going to have to</p> <p>20 help me with this, Mr. Falkenberg. I thought you told</p> <p>21 me earlier that all we had to do was test your product</p> <p>22 and we would know if it's infringed our patent or not.</p> <p>23 Did you not tell me that earlier?</p> <p>24 A. I think you could determine that by testing</p> <p>25 it.</p>	<p style="text-align: right;">176</p> <p>1 Q. Does Durasoil contain any thermoplastic</p> <p>2 polyolephines?</p> <p>3 A. Again I am going to refer to what I put here</p> <p>4 on my reply. Would you like me to read it?</p> <p>5 Q. Sure.</p> <p>6 A. Durasoil does not contain any thermoplastic</p> <p>7 polyolephines, however, this term needs better defining</p> <p>8 because there is no CAS number, it's a general term,</p> <p>9 it's not specific. And that really is a problem that</p> <p>10 these terms were not good terms.</p> <p>11 Q. Does Durasoil contain a synthetic isoalkane?</p> <p>12 A. If a synthetic isoalkane is defined by being</p> <p>13 manufactured molecule by molecule such as a Group 4 PAO</p> <p>14 base oil, then our product is not and does not contain</p> <p>15 any synthetic isoalkane.</p> <p>16 Q. Okay.</p> <p>17 A. But I would also like to say that I don't</p> <p>18 think that's how Midwest is defining it.</p> <p>19 Q. How do you think Midwest is defining it?</p> <p>20 A. It's so ambiguous I think the intention is to</p> <p>21 be ambiguous and cover the sky.</p> <p>22 Q. So what is the ambiguity as you understand it?</p> <p>23 A. I am going to make a far-out generality, it's</p> <p>24 like I am going to patent the group food. Well, that's</p> <p>25 pretty broad and it encompasses a lot of things. And I</p>

<p style="text-align: right;">177</p> <p>1 mean that's an overexaggeration, but the point is is</p> <p>2 that synthetic isoalkane covers a lot of different</p> <p>3 things and it can be defined in many different ways.</p> <p>4 Again, it's too broad.</p> <p>5 Q. Do you think it could be defined in a way such</p> <p>6 that Durasoil would be interpreted to have a synthetic</p> <p>7 isoalkane?</p> <p>8 A. Here is what I would love to see, I would love</p> <p>9 to see that mineral oil is or is not with CAS number</p> <p>10 such and such, does or does not meet the terms of being</p> <p>11 what Midwest is defining as a synthetic isoalkane.</p> <p>12 That's the kind of stuff I would love to be able to</p> <p>13 look at, but in fact we have to infer what they are</p> <p>14 meaning by these broad terms and that's not easy.</p> <p>15 Q. So back to my question though, do you think</p> <p>16 that there is a definition of synthetic isoalkane</p> <p>17 wherein Durasoil would meet having a synthetic</p> <p>18 isoalkane?</p> <p>19 A. I think it's possible. For example, if</p> <p>20 mineral oil is a synthetic isoalkane or base oil that</p> <p>21 we describe in our ingredient list are considered as a</p> <p>22 synthetic isoalkane, then it is what it is.</p> <p>23 Q. Well, let me ask you is mineral oil an</p> <p>24 isoalkane?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">179</p> <p>1 A. Sure.</p> <p>2 Q. Because you said naturally occurring, I just</p> <p>3 want to make sure you are talking about not naturally</p> <p>4 occurring.</p> <p>5 Have you tested Durasoil to find out if</p> <p>6 it has an isoalkane?</p> <p>7 A. Again, I don't know what an isoalkane is. I</p> <p>8 don't know what you guys are trying to classify as an</p> <p>9 isoalkane.</p> <p>10 Q. But let me ask you this, we have determined</p> <p>11 that you are not a chemist, correct?</p> <p>12 A. Again, yes.</p> <p>13 Q. Have you turned to a chemist to find out if</p> <p>14 they can determine whether or not Durasoil has an</p> <p>15 isoalkane?</p> <p>16 A. I have been advised by people, yes.</p> <p>17 Q. Who have you been advised by?</p> <p>18 A. Randy McFarlane.</p> <p>19 Q. Who is Randy?</p> <p>20 A. He is with ConocoPhillips.</p> <p>21 Q. What has Randy told you?</p> <p>22 A. Randy helped clarify his take on what these</p> <p>23 binders and acids and esters and thermoplastics, he</p> <p>24 helped paint his knowledge and his picture of what he</p> <p>25 believes that might be.</p>
<p style="text-align: right;">178</p> <p>1 Q. Do you know is mineral oil synthetic?</p> <p>2 A. I know mineral oil is refined.</p> <p>3 Q. But do you know if it is synthetic?</p> <p>4 A. It depends on how you are defining</p> <p>5 "synthetic," and if you are defining synthetic as</p> <p>6 something that is not natural, then I would certainly</p> <p>7 classify it as synthetic.</p> <p>8 Q. Because you believe mineral oil is not</p> <p>9 natural?</p> <p>10 A. I believe so.</p> <p>11 Q. So in other words is your definition of</p> <p>12 "synthetic" just anything that's not natural?</p> <p>13 A. Mineral oil to the best of my knowledge cannot</p> <p>14 be obtained in the form that we use it today without</p> <p>15 going through some sort of process.</p> <p>16 Q. But my question was a little bit broader than</p> <p>17 that. Is your definition of "synthetic" anything</p> <p>18 that's not natural?</p> <p>19 A. I think that could be a good definition.</p> <p>20 Q. Why don't you just tell me what is your</p> <p>21 definition of "synthetic." I kind of put words in your</p> <p>22 mouth, I didn't mean to do that.</p> <p>23 A. I think it could be described as something</p> <p>24 that's not natural or naturally occurring.</p> <p>25 Q. Not naturally occurring?</p>	<p style="text-align: right;">180</p> <p>1 Q. Did Randy help you in drafting these two</p> <p>2 pages?</p> <p>3 A. I asked him questions relating to what you</p> <p>4 have in your patent so that I could answer this.</p> <p>5 Q. So he helped you draft or he helped you with</p> <p>6 your drafting of these two pages, correct? Based on</p> <p>7 the conversations you had with him you drafted these</p> <p>8 two pages?</p> <p>9 A. Based on our conversation he helped me fill</p> <p>10 in, you know, fill in the blanks that I needed to go</p> <p>11 and make this document.</p> <p>12 Q. Okay, fair enough.</p> <p>13 A. But he did not sit down and help me put this</p> <p>14 together.</p> <p>15 Q. And who is Randy McFarlane?</p> <p>16 A. He is with ConocoPhillips and he is -- I</p> <p>17 believe he's one of the salesmen. He is one of my main</p> <p>18 points of contact.</p> <p>19 Q. So did you ask Randy if Durasoil has an</p> <p>20 isoalkane in it?</p> <p>21 A. I did.</p> <p>22 Q. And what did he say?</p> <p>23 A. He said that if a synthetic isoalkane -- and I</p> <p>24 am paraphrasing.</p> <p>25 Q. Sure.</p>

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1 A. If a synthetic isoalkane is being defined as  
2 being manufactured molecule by molecule, and he gave  
3 the example such as a Group 4 PAO base oil, then our  
4 Durasoil would not fall under that category.

5 Q. Okay.

6 A. Does that make sense?

7 Q. It makes sense that he told you that. Did he  
8 tell you anything else with respect to why it's not a  
9 synthetic isoalkane?

10 A. He had a lot of trouble getting his arms  
11 around such a broad term --

12 Q. Okay.

13 A. -- just as I have and that's why I went to  
14 him.

15 Q. Did you talk with anyone else in preparing  
16 these two pages?

17 A. I would say that he was the pivotal person. I  
18 don't remember talking to anyone else to help me put it  
19 together. I was primarily the one who did it on my own  
20 as best as I could.

21 Q. It also goes on to say "Durasoil is applied  
22 neat to the surface soil"?

23 A. Which number are we looking at?

24 Q. No. 3.

25 A. That is a correct statement.

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1 Q. Do you know what it means to be applied neat?

2 A. My definition of being "applied neat" is that  
3 we do not have to dilute the product in order to apply  
4 it, it can be applied as is.

5 Q. It goes on in No. 4 to say "Durasoil does not  
6 contain thermoplastic polyolephines." Is that a true  
7 statement?

8 MR. DOSEK: Object to the form.

9 A. If you read what I wrote here, you will see  
10 that this term needs better defining. This term is  
11 even worse than the synthetic isoalkane, so we are  
12 really going deep in the ugly hole here with broad  
13 terms.

14 Q. BY MR. SKERIOTIS: But you did state "Durasoil  
15 does not contain thermoplastic polyolephines, did you  
16 not?"

17 A. To the best of my knowledge and based on the  
18 help I got from Randy McFarlane, it would seem that it  
19 does not.

20 Q. You go on to say "Durasoil does not contain  
21 carboxylic acids" and that's consistent with what you  
22 have in No. 1, correct?

23 A. Those two match.

24 Q. There is a sentence up there that says that.

25 A. If I am struggling with this I can only

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1 imagine you struggling with this.

2 Q. Oh, it's not that bad. You go on to say in  
3 No. 10 "Durasoil does not reduce erosion." Is that a  
4 true statement?

5 MR. DOSEK: Object to the form.

6 A. I can't say for sure. We talked earlier that  
7 we do not intend to use Durasoil for erosion control as  
8 it relates to water erosion, that is not our purpose.

9 Q. BY MR. SKERIOTIS: So is that statement that  
10 you wrote there a true statement or not?

11 MR. DOSEK: Object to the form.

12 A. I wrote it.

13 MR. SKERIOTIS: Scott, just out of  
14 curiosity, what is the objection? It's his own  
15 writing, he wrote it, he has an understanding of what  
16 he wrote.

17 MR. DOSEK: Because the way the question  
18 is formed. And I am not sure that you can ask a proper  
19 question given the fact that we don't have a definition  
20 of the term "erosion" and we have got it clear on the  
21 record today that when we are talking about wind  
22 erosion versus water erosion, we are talking about two  
23 different things. So I just want that to be clear.

24 MR. SKERIOTIS: I want to be clear too, I  
25 am just asking him what he wrote. I mean he wrote it.

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1 I mean it's not like he is interpreting somebody else's  
2 writing. His own writing, I am asking for his  
3 clarification. Is that a true statement, that's all I  
4 asked.

5 Q. BY MR. SKERIOTIS: But anyway, go ahead. I am  
6 sorry. Is that a true statement, "Durasoil does not  
7 reduce erosion"? I mean if you are saying today that  
8 what you meant by that was some different type of  
9 erosion, just clarify.

10 A. Okay. Because Durasoil does reduce wind  
11 erosion because it's used as a dust control agent,  
12 which wind erosion and dust control are fairly close to  
13 each other, but it is not intended to be used as an  
14 erosion control agent and we have not tested it to  
15 verify that it does reduce water erosion. I would  
16 assume and it's my opinion that Durasoil does not  
17 reduce water erosion.

18 Q. Okay. And that's what you meant by this  
19 statement then, water erosion?

20 A. That's my explanation.

21 Q. It goes on to say "Durasoil is not comprised  
22 of two organic materials." Is that a true statement?

23 A. It's my opinion that it does not.

24 Q. It goes on to say on No. 12 "Durasoil is not a  
25 blend." Do you see that?



<p style="text-align: right;">185</p> <p>1 A. I do.</p> <p>2 Q. Is that a true statement?</p> <p>3 A. Again this is similar to the erosion issue and</p> <p>4 "blend" meaning a blend of -- what I am referring to</p> <p>5 here is when you look at the patent they are talking</p> <p>6 about blending all sorts of ingredients that are not</p> <p>7 within the same family such as a binder with their</p> <p>8 synthetic isoalkane.</p> <p>9 We do not have a binder, we don't blend</p> <p>10 in a binder. Yes, we do blend viscosities. So when</p> <p>11 I'm referring to not being a blend, I'm specifically</p> <p>12 looking at we do not blend in binders because that's</p> <p>13 what seemed to be the pivotal issue.</p> <p>14 Q. So if you could you would rewrite that to say</p> <p>15 Durasoil does not blend, or I am sorry, Durasoil blends</p> <p>16 for example different viscosities but does not blend</p> <p>17 for example binders with other ingredients?</p> <p>18 A. That's a close definition.</p> <p>19 Q. And you see later on it says again on 15 the</p> <p>20 last sentence "Durasoil's composition does not contain</p> <p>21 any binders"?</p> <p>22 A. Correct.</p> <p>23 Q. Is that consistent with what you just said</p> <p>24 about binders?</p> <p>25 A. I think that's consistent.</p>	<p style="text-align: right;">187</p> <p>1 synthetic because it kind of doesn't say anything about</p> <p>2 when it would be synthetic? Do you agree it just says</p> <p>3 when it's not synthetic or when it would be</p> <p>4 semi-synthetic? Is there a time at which it would be</p> <p>5 considered "synthetic"?</p> <p>6 A. I think if I understand this correctly and</p> <p>7 what I have learned from ConocoPhillips is that Conoco</p> <p>8 would probably take the stance that a Group 4 base oil</p> <p>9 would be considered synthetic not including anything</p> <p>10 below that. That would be my assumption.</p> <p>11 Q. So Group 1, 2 or 3 would not be synthetic?</p> <p>12 A. I don't think they would include that in their</p> <p>13 definition of 100 percent fully synthetic. But again I</p> <p>14 can't speak on their behalf, that's an assumption.</p> <p>15 Q. That's your understanding though?</p> <p>16 A. That's my understanding.</p> <p>17 Q. Do you know, did you do any testing to figure</p> <p>18 out if Durasoil is synthetic or not?</p> <p>19 A. I don't know what test that would be.</p> <p>20 Q. So the answer is "no"?</p> <p>21 A. The answer would be no.</p> <p>22 MR. SKERIOTIS: Time to take a break?</p> <p>23 MR. DOSEK: Fine with me.</p> <p>24</p> <p>25 (END OF ATTORNEYS' EYES ONLY SECTION)</p>
<p style="text-align: right;">186</p> <p>1 Q. Do all of your salespeople typically know what</p> <p>2 Durasoil is?</p> <p>3 A. Define "know."</p> <p>4 Q. Do they understand it doesn't have any</p> <p>5 binders?</p> <p>6 A. I can't say that for sure.</p> <p>7 Q. If somebody were to ask you if Durasoil has a</p> <p>8 binder would you tell them it doesn't have any binders?</p> <p>9 A. That's very likely.</p> <p>10 Q. Turn to the next page if you don't mind.</p> <p>11 No. 6 says "Durasoil does not contain any</p> <p>12 emulsifiers." Is that a true statement?</p> <p>13 A. I believe so.</p> <p>14 Q. No. 7 says "if synthetic is defined as</p> <p>15 molecules that are manufactured/built molecule by</p> <p>16 molecule like a Group 4 based PAO base oil rather than</p> <p>17 being broken down like Group 1, 2 or 3 base oils from</p> <p>18 larger molecules, then Durasoil is not synthetic."</p> <p>19 Is that a true statement?</p> <p>20 A. That would be my opinion.</p> <p>21 Q. And it goes on to say "if semi-synthetic is</p> <p>22 defined as molecules created from larger molecules,</p> <p>23 then Durasoil is semi-synthetic."</p> <p>24 A. That's what makes sense to me.</p> <p>25 Q. Can you explain when Durasoil would be</p>	<p style="text-align: right;">188</p> <p>1 (Recess.)</p> <p>2 (Deposition Exhibits Nos. 26 and 27 were</p> <p>3 marked.)</p> <p>4 Q. BY MR. SKERIOTIS: Mr. Falkenberg, you were</p> <p>5 handed what was marked Exhibit 26, I didn't ask you any</p> <p>6 questions about that at this point in time and we</p> <p>7 pulled that back and I have now given you what has been</p> <p>8 marked as Exhibit 27. Have you seen that document</p> <p>9 before?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Do you know what it is?</p> <p>12 A. Not without reading it.</p> <p>13 Q. Why don't you take a minute to take a look at</p> <p>14 it.</p> <p>15 A. Okay.</p> <p>16 Q. Do you know what it is?</p> <p>17 A. It appears to be a bid.</p> <p>18 Q. Okay.</p> <p>19 A. An invitation to bid.</p> <p>20 Q. Correct. And in fact I believe it may even be</p> <p>21 a bid, correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. So it encompasses two things, it's an</p> <p>24 invitation to bid along with the blanks filled in, so</p> <p>25 it's both an invitation to bid and also has the blanks</p>